IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 771 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARISH RAMANBHAI PATEL

Versus

ISHVARLAL V JADAWALA

Appearance:

MR KC SHAH for Petitioner

MR AJ MEMON for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 22/09/2000

ORAL JUDGEMENT

1. This is tenant's revision u/s.29(2) of the Bombay Rent Act against the Judgment and Decree of the lower Appellate Court confirming the judgment and Decree of the trial Court.

2. Brief facts are that two rooms in Bungalow No.5 of Anand Co.Operative Society were let out by the respondent to the revisionist on monthly rent of Rs.161/-. It was alleged that the revisionist was irregular in payment of rent and he failed to pay the rent after 1.6.1978. Alleging that the revisionist was

tenant in arrears of rent for more than six months, notice of demand was given on 6.2.1979 which was served on the tenant. The tenant did not pay the arrears of rent within a month of service of notice of demand nor did he raise any deispute of standard rent. Consequently the Suit for eviction and recovery of arrears of rent was filed. Another ground for eviction was that the premises was required by the landlord for his bonafide and reasonable requirement.

3. The Suit was resisted by the revisionist on the ground that the disputed premises was not raquired bonafide and reasonably by the landlord. On the point of arrears of rent and the rate of rent the stand of the revisionist was that the agreed rent was not Rs.161/p.m., but it was at Rs.55.50 ps. per month inclusive of all taxes. It was denied that the rent was paid by the revisionist upto 31.5.1978. Service of notice of demand was also denied by the defendant - revisionist. He further pleaded that he paid the entire rent upto 30.12.1978 and the rent for the period betwen 1.11.1978 to 30.12.1978 amounting to Rs.111/- was paid in cash to the plaintiff on 2.1.1979. The rent for January and February, 1979 was not accepted by the plaintiff hence he remitted the rent amounting to Rs.111/- as rent for January and February 1979 by Money Order which was refused by the plaintiff. Dispute of standard rent was also raised in the written statement pleading that the standard rent should not exceed Rs.25/- p.m. inclusive of taxes.

4. The trial Court concluded from the evidence on record that the revisionist was in arrears of rent for more than six months and he failed to pay the same within a month of service of notice of demand. The case of reasonable and bonafide requirement of the landlord was not accepted. The trial Court fixed the standard rent at Rs.111/- p.m. It was further found by the trial Court that the defendant failed to establish that he had paid the arrears of rent upto 31.5.1979. With these findings the Suit was decreed.

5. Feeling aggrieved the revisionist filed Appeal whereas the respondent - landlord filed cross objection against the quantum of standard rent fixed by the trial Court. The lower Appellate Court dismissed the Appeal as well as cross objection of the tenant and the landlord respectively, hence this revision by the tenant.

6. Shri K.C.Shah, learned Counsel for the revisionist has been heard so also Shri A.J.Memon,

learned Counsel for the respondent.

7. Shri K.C.Shah, contended that the case is not covered by Section 12(3)(a) of the Bombay Rent Act and both the Courts below were in error in holding that the case is duly covered by the aforesaid section. He has also referred to Section 20 of the Rent Act and argued that the excess rent demanded by the landlord was liable to be adjusted after fixation of standard rent at Rs.111/- p.m. as against the rent of Rs.161/- p.m. alleged by the landlord.

8. It is the case of concurrent findings of fact recorded by the two Courts below. There is hardly any scope of interference in the concurrent findings of fact recorded by the two Courts below.

9. The quantum of standard rent fixed by the trial Court at the rate of Rs.111/- is not liable to be agitated in this revision because the cross objection of the landlord was dismissed by the lower Appellate Court and no revision has been filed by the landlord. Consequently the defendant's plea that the standard rent should be Rs.25/p.m. inclusive of all taxes was rightly rejected by the two Courts below.

10. The question of service of notice is a question of fact which was answered by the two courts below against the tenant. There is no perversity in the said findings. Consequently it has to be accepted that the notice of demand dated 6.2.1979 was served on the tenant.

11. In order to see whether the case falls within the ambit of Sectoin 12(3)(a) of the Act or not, four points have to be kept in mind, namely (1) whether it was a case of monthly tenancy; (2) whether there was any dispute of a standard rent between the parties; (3) whether the tenant was in arrears of rent for a period exceeding six months, and (4) whether the tenant neglected and failed to pay the rent exceeding six months within a period of one month of service of notice of demand.

12. So far as the question of nature of tenancy is concerned both the Courts below have rightly answered that it was monthly tenancy and not annual tenancy. Hence this finding requires no interference.

13. So far as the second ingredient is concerned, namely, the dispute of standard rent, it is clear that no such dispute was raised by the tenant within a month of service of notice of demand. No such dispute of standard

rent was raised by the tenant before service of notice of demand. If such dispute was to be raised by the tenant he should have come forward either by reply to the notice of demand within a period of one month or by moving an application for fixation of standard rent. Admittedly no reply notice was given by the tenant. Likewise no application for fixation of standard rent u/s.11 was moved by the tenant. The dispute was raised for the first time in the written statement that the standard rent should not exceed Rs.25/- p.m. This dispute in the written statement was also not raised nor could be raised within a month of service of notice of demand. The lower Appellate Court has observed that this dispute in the written statement was raised after six months of service of notice of demand and after more than four months of institution of the Suit. Consequently it cannot be said that there was bonafide dispute of standard rent raised by the tenant within the statutory period. This condition was, therefore, also fulfilled in the instant case.

14. So far as the third ingredient is concerned, according to the landlord - respondent the revisionist had not paid the rent with effect from 1.6.1978. Notice of demand was issued on 6.2.1979 which was served on the tenant. It was thus alleged by the landlord that eight months rent was due from the tenant and no payment was made within a month of service of notice of demand. The case of the tenant on the other hand was that it is incorrect that the rent was paid only upto 31.5.1978. The landlord case was that whenever the rent was paid by the tenant receipt used to be issued on a book maintained by the tenant. Though the tenant has denied that the rent receipt was issued on any book maintained by him but it does not appear believable that the tenant could have made the payment of rent without obtaining any kind of receipt. He did not say that any printed receipt was issued to him nor the landlord stated that he used to issue receipt on the printed form or from rent receipt book. The question of arrears of rent for the period for which the arears were due is also a question of fact on which there is concurrent finding recorded by the two courts below which does not suffer from any manifest perversity or illegality.

15. The revisionist's case was that the rent from 1.11.1978 to 31.12.1978 amounting to Rs.111/- was paid in cash on 2.1.1979, and that the rent for January and February 1979 was remitted by Money Order which was refused. The revisionist categorically admitted that he had not sent any amount of rent to the plaintiff for the

period between 7.2.1979 to 7.3.1979. He further admitted that he had sent the Money Order for the month of June, 1978. The refused Money Order Coupan was not brought on record. Shri K.C.Shah, however, contended that mere tender of rent if proved is sufficient compliance and it is not necessary that the rent should have been actually paid to the landlord. The lower Appellate Court has not believed the remittance of rent for June, 1978 by Money Order. In the alternative the lower Appellate Court has considered that even if the remittance of Money Order for Rs.111/- is accepted as remittance of rent for June, 1979 still the arrears of rent will be for a period of seven months which exceed six months and as such the landlord is entitled to decree of eviction. At this stage Shri K.C.Shah, learned Counsel for the revisionist has drawn my attention to Section 20 of the Rent Act. Section 20 provides that any amount paid on account of rent after the date of coming into operation of this Act shall except in so far as payment thereof is in accordance with the provisions of this Act, be recoverable by the tenant from the landlord to whom it was paid or on whose behalf it was received from him or from his legal representative at any time within a period of six months from the date of payment and may without prejudice to any other remedy for recovery be deducted by such tenant from any rent payable by him to the landlord. In the first place it may be mentioned that this section is not applicable because there is no cogent evidence that the so called taxes were paid by the tenant on behalf of the landlord on account of rent. Secondly, no such case was taken in defence that this amount is liable to be deducted towards arrears of rent. Obviously, for these two reasons Section 20 of the Act is not applicable and the contention of Shri K.C.Shah to the contrary seems to be unacceptable.

16. Shri K.C.Shah further contended that since the standard rent was fixed at Rs.111/- p.m. and since the landlord in the notice of demand demanded rent at the rate of Rs.161/- p.m. the demand exceeded by Rs.50/p.m. and if this amount is reduced the tenant cannot be said to be in arrears of rent for more than six months. This contention is also difficult to accept because when the notice of demand was issued the landlord could have demanded the rent from the tenant at the agreed rate and the tenant was bound to pay the rent at the agreed rate. If he wanted to agitate the dispute of standard rent he should have turned within a month of service of notice of demand. Consequently reduction or deduction of Rs.50/p.m. as suggested by Shri K.C.Shah cannot be accepted. The findings of the two Courts below that the

revisionist was in arrears of rent in any case for more than six months cannot be said to be erroneous.

17. The fourth condition is also fulfilled because during statutory period of one month of the date of service of notice of demand arrears of rent were not paid to the landlord.

18. Consequently all the ingredients of Section 12(3)(a) of the Rent Act were found established hence the two courts below were justified in passing the decree for eviction of the tenant. I, therefore, do not find any illegality in the judgments and Decrees passed by the two Courts below. The Revision is accordingly dismissed with no order as to costs.

sd/-

Date : September 22, 2000 (D. C. Srivastava, J.)

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